

# State of Wisconsin, Department of Revenue

DIVISION OF STATE AND LOCAL FINANCE, BUREAU OF PROPERTY TAX, 2135 Rimrock Road, P.O. Box 8971, MS6-97, Madison, WI 53708-8971

## REAL ESTATE TRANSFER NEWS (RETN)

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The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. For additional information, go to Real Estate Transfer and Merger/Conversion page: <http://www.revenue.wi.gov/ust/retn.html>

This and past RETNs may be found under Resources; [Newsletters](#) (Real Estate Transfer News)

Use the eRETR (electronic Real Estate Transfer Return): Real Estate Transfer Return Filing - [eRETR PE-500 and PE-500x](#)

***2007 Act 219 (Senate Bill 549) signed into law on April 7, 2008, effective April 22, 2008, creates stricter confidentiality standards for real estate transfer returns, and requires that all real estate transfer returns be filed electronically on or after July 1, 2009. See Q7 below for security issues.***

- Q1. I have a client who recorded a Non-Probate TOD Deed and now wants to revoke it. I have drafted a Quit Claim Deed that states specifically that the Deed is made pursuant to Wis. Stat. §705.15(3) and is removing the beneficiary. I assume that I will need a Transfer Tax Return; however, I am unsure of what exemption to use.**
- A.** Per 705.15(3), Stats, the designation of a TOD beneficiary on a deed does not affect ownership of the property until the owner's death. A document designating or removing a transfer on death beneficiary **does not require a transfer return**; however, language must be placed on the document to exempt it from return such as: "This document is only removing a transfer on death beneficiary and exempt per s. 77.21(1), Stats and s. 77.25(10m), Stats." See RETN October 2006, 1Q <http://www.revenue.wi.gov/ust/news/0610.pdf>
- Q2. I am selling a property that has items listed as "personal property" for the property tax exemption as defined by Chapter 70. Are these items also exempt from transfer fee?**
- A.** Not necessarily. If an item of "personal property" is a fixture, it will not be exempt from the transfer fee, regardless of earlier property tax treatment. Fixtures are defined as real property per s. 77.21(1m), Stats. and are included in the total value of the real estate transferred. The value of such items would be shown on Line 22 of the paper PE-500 and on the eRETR Fee Computation section, in the box "Value of property exempt from local property tax INCLUDED on Total Value of REAL ESTATE transferred (see above)."
- To determine if an item is a fixture one must answer the following general questions:
- (a) Is the article physically attached to the premises?  
Generally, if the item is so attached that it cannot be removed without causing substantial damage to the remaining realty, it is usually considered a fixture.
- (b) Is there any special "adaptation" between the article and the premises?  
If the fixture or the realty is built "specially" to accommodate the other, it is usually considered a fixture. The item in question has less value if removed and taken somewhere else.
- (c) Was the intention of the owner to make the item a permanent part of the premises?  
Here the test is what the "average person normally intends" for the item, not what the owner intended. Generally, those items which the owner adds or affixes to the real estate will be considered a fixture.
- Q3. I am selling my lot and mobile home. I know the lot is subject to transfer fee, but is the mobile home considered real estate or personal property?**
- A.** The mobile home is classified as real estate and subject to fee when the mobile home is on land owned by the homeowner; on a foundation (includes blocks) and hooked to utilities. It would be considered personal property if any of the three requirements was not met.

**Q4. What exemption applies for a conveyance to or from a nonprofit organization or church?**

- A. There is no exemption for conveyances to or from a nonprofit organization or church per Tax 15.03(5), Wis. Adm. Code. The fee would be based upon the fair market value of the property if a gift or deed of nominal consideration or if a sale, the sales price.

**Q5. A hospital built a day care center on property it owns. Now, they are just selling the building and the new owners are going to lease the land. Is the sale of just the building going to be subject to transfer return and fee?**

- A. Yes, the sale of just the building will require a transfer return and fee. The building on leased land is defined as real estate per s. 77.21(1m), Stats. "Real estate includes, but is not limited to, fixtures; roots, vines and trees of perennial crops; stock in a cooperative building; improvements on leased land; timber; and minerals." Note that if the lease is for 99 years or more, the lease will also be subject to a transfer return and fee. "Leases for at least 99 years but excluding leases for less than 99 years" are defined as a conveyance of real estate per s. 77.21(1), Stats.

**Q6. What law permits the Department of Revenue to require the social security numbers (SSN/FEIN) to be completed on the transfer return?**

- A. Section 1211 of the Tax Reform Act of 1976, P.L. 94-455, Congress enacted Title 42 § 405(c) (2)(C) which provides for the use of SSN/FEIN by a state, "in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction."

**Q7. What measure is the Department of Revenue taking to insure that the eRETR information, mainly the social security numbers and FEIN are secure from identity theft?**

- A. The real estate transfer return, both the paper PE-500 and electronic eRETR are confidential per s. 77.265, Stats. and restricts who has access to them. In addition, 2007 Act 219 (Senate Bill 549) signed into law on April 7, 2008, effective April 22, 2008, creates stricter confidentiality standards for real estate transfer returns, and requires that all real estate transfer returns be filed electronically on or after July 1, 2009.

When the eRETR is used, the social security numbers will only appear in the saved file on the preparer's computer and on the printed Summary section. If the Summary is printed to take to closing for the parties, the copies to be handed out should have the social security numbers redacted. Once the eRETR is "submitted" to the Department, the data with the social security number is removed to a different server from which only Revenue employees can access the data. Local government officials and state agencies use the information for specific purposes must use their own personalized Id and password to enter the system and even then are not allowed into the servers with the social security numbers.

Even though the mandate for eRETR is July 1, 2009, the Department encourages the use of the eRETR since the secure electronic environment will prevent unwarranted access to confidential taxpayer information.

Link to act 219 (<http://www.legis.state.wi.us/2007/data/acts/07Act219.pdf>) and the statutes (<http://www.legis.state.wi.us/rsb/stats.html>)

**Q8. Does a vendee's assignment of land contract for collateral only require a transfer return?**

- A. No, as long as the assignment clearly states that it is for collateral only. Note that a "bare assignment" of a vendee's interest, where the type of assignment under paragraph A or B (State Bar of Wisconsin Form 15-2003) are either both crossed out or both are checked requires a return and fee. It will be implied that the assignee has assumed this debt rather than accepting the assignment for collateral only.

**Q9. Does a condo declaration amendment that relocates the boundaries between adjoining units require a transfer return?**

- A. Yes. An amendment to a declaration would be considered a conveyance as it shall identify the units involved and shall state that relocates the boundaries between those units are being relocated by agreement of the unit owners thereof. Per s. 703.13(6)(c), Stats. the "amendment shall contain words of conveyance between those unit owners, and when recorded shall also be indexed in the name of the grantor and grantee." Whether an exemption from fee applies would be determined on the situation just as any other conveyance is determined.